

A COMMENT ON FAMILY PROPERTY AND INHERITANCE AMONG THE NORTHERN EWE

By KLUDZE

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Dr. Kludze's paper on Family Property and Inheritance among the Northern Ewe leaves many relevant questions unasked and unanswered. He expressly attempts to make general proposition for the Ewes though he warns us that he has not been able to conduct any research among the Togolese Ewe, and though he states that he would like to concentrate on the Northern Ewe.

The first question he leaves unanswered is whether or not there is any such thing as the clan among the northern Ewe. It is a material question, for, as is evident from Dr. Nukunya's paper on "Some Bilateral Elements in Anlo Kinship", appearing in the same volume, the Anlo social organisation is based on clanship and lineage organisation. And Dr. Kludze's exclusive application of the name "family" to the *dzotimu* defined in narrow lineage terms leaves one guessing concerning the question posed at the beginning of this paragraph.

Secondly from his insistence that "there is only one type of family among the Ewe", namely the *dzotimu* and that "family property" means "*dzotimu* property", he proceeds to assert that "this definition of family property deliberately excludes from the ambit of family property even undivided property in which an interest is jointly held by the children . . ." The question which arises is whether there are no instances among the northern Ewe of undivided property jointly held by children, grandchildren and great-grandchildren (a situation not covered by his discussion), and if such instances exist, what name is given to such property; and how such property is administered under the law of the Northern Ewe?

Quoting from a passage in my book where I am explaining why this notion of individual property "is not foreign to native ideas" Dr. Kludze in disagreement asserts, in effect that in the old Ewe law no individual could own land individually. Nevertheless he admits in a footnote that individual acquisition of land is now possible among the Ewe. We are, in my view, entitled to ask how and when this change in the customary law came about. And, in any case, the question arises: how does he reconcile his assertion that under the old Ewe law no individual could acquire land individually with his assertion that "among the Ewe the family as such does not succeed to the intestate estate of its deceased members. It is individuals who succeed"?

Furthermore, what does he mean by his statement that it is individuals that succeed to the estate of a deceased intestate? For example, if the deceased left children and grandchildren and his property consisted in buildings, is Dr. Kludze to be understood to be saying that one child takes the said property to the exclusion of the rest or that all the children take together? Is it not the case that such property is usually left undivided?

When Dr. Kludze tells us that "concerning self-acquired property the rule of Ewe law is that children succeed as of right to their deceased father's interest property," are we to understand that he is not speaking of a type of group succession? And is it not the same in the other contingencies where the deceased is not survived by children or descendants of children?

Finally, and by way of general review, we must ask: is the procedure by which the Dzotinu has been selected by Dr. Kludze as meriting the English appellation "family" a satisfactory and fruitful one? Even in English law the application of the word family is far from certain. As Earl Jowitt puts it in his *Dictionary of English Law*, "the word family is a popular and not a technical expression" (1959: 784). And Bromley in his *Family Law* tells us that "the word 'family' is one which is difficult, if not impossible to define precisely. In one sense it means all blood relations who are descended from a common ancestor; in another it means all members of a household, including husband and wife, children, servants and even lodgers" (1962: 9). Judicial definitions of the term are no more precise. Thus in *Blackwell v. Bull*¹, Lord Langdale, Master of the Rolls said concerning the word: "Under different circumstances it may mean a man's household, consisting of himself, his wife, children and servants; it may mean his wife and children, or his children excluding his wife," Jessel, M. R., said that the primary meaning of "family" is "children"² and Wright J., said that though the primary meaning of "family" is "children", this is susceptible of a wider interpretation. And he held in the actual case before him that family included brothers and sisters.³

Against this background of the varied use of the word family in English practice, and of the varied use of that word in relation to social units of varying amplitude in African customary law, it becomes questionable whether the purpose of illumination is really served by Dr. Kludze's exclusive application of the word family to the *dzotinu*, and by his denial of the family character of any property other than *dzotinu* property. And it is suggested that the way to a more systematic and exhaustive analysis of property and inheritance law lies in the sedulous identification of the units of property-holding ranging from major group units through smaller ones like the clan and lineage and set of children to the individual human being. Against the background of this varied use of the term family indicated above, and the fact that the textwriters to whom he refers specifically indicate the differing range of persons covered by their use of the term, which includes the patrilineage and, sometimes, just children, there would seem to be little excuse for the use of those quotations out of context to suggest that there is significant disagreement or error concerning succession to the property of a deceased intestate Ewe.

Cases cited

1. *Blackwell v. Bull*, 1 Keen. 176 at 181.
2. *Pigg v. Clarke*, (1876) 3 Ch. D. 672 at 674.
3. *Price v. Gould*, (1930) 143 L. T. 333 at 334.

Editor's Note

Author died by motor accident on the 21st October, 1974